

**ATTACHMENT A
SETTLEMENT AGREEMENT**

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RECITALS

A. On March 21, 2005, the California Public Utilities Commission (Commission) issued an Order Instituting Investigation (OII) 05-03-011 into the December 20, 2003, fire at Pacific Gas and Electric Company's (PG&E's) Mission Substation in San Francisco, which caused an outage to more than 100,000 customers in San Francisco.

B. The OII ordered PG&E to show cause why the Commission should not make a finding that PG&E was in violation of California Public Utilities Code section 451 by allowing an unsafe condition to exist at the Mission Substation.

C. The OII informed PG&E that, pursuant to Public Utilities Code Sections 2107 and 2108, the Commission may impose penalties in the amount of \$500 to \$20,000 per day per offense. Pursuant to Public Utilities Code Section 2104, such penalties would be paid to the General Fund of the California State Treasury.

D. The OII also directed PG&E to file a status report on the condition of its other indoor substations and put PG&E on notice that it may consider ordering PG&E to make changes in its maintenance, operations, or construction standards.

E. The Assigned Commissioners' April 19, 2005, Scoping Memo and Ruling noted that another fire broke out at Mission Substation on March 26, 2005, and directed PG&E to include in its status report conditions at Mission Substation between December 20, 2003, and March 26, 2005, which would be considered in the

Commission's deliberations on whether to impose a penalty and/or to order prospective changes at PG&E's indoor substations.

F. The Consumer Protection and Safety Division (CPSD) submitted testimony alleging that PG&E's management failed to take preventative steps to mitigate an unsafe condition at PG&E's Mission Substation in that PG&E failed to implement the recommendations of its own Insurance Department in a 1996 incident report, which recommended that PG&E do the following at Mission Substation and other PG&E indoor substations: 1) initiate a fire barrier penetration sealing program to seal openings; 2) review procedures for quickly responding to abnormal conditions such as breakers operations to promptly identify potential problems; and 3) evaluate a cost effective method of smoke detection throughout the substation. CPSD recommended the Commission impose a monetary penalty of \$3,225 per day that PG&E's management allowed the unsafe condition to continue, resulting in a potential penalty of approximately \$10 million.

G. The City and County of San Francisco (CCSF) submitted testimony in the case recommending that the Commission impose a penalty upon PG&E of no less than \$14.6 million, based in significant part on PG&E's failure to implement its own internal recommendations following the fire at Mission Substation in November 1996. CCSF also submitted testimony by the San Francisco Fire Department (SFFD) raising concerns that PG&E's report regarding the March 26, 2005 fire and outage gave the incorrect impression that SFFD bore some responsibility for the scope and extent of that outage.

J. PG&E submitted rebuttal testimony in this proceeding in support of its position that Mission Substation has been operated in a safe and reliable manner in compliance with all applicable laws, codes, regulations, and Commission orders. PG&E also identified the steps PG&E has taken to ensure the continued safety and reliability of its system and recommended that no penalty be imposed in this case.

DEFINITION

In this agreement, Final Approval refers to the date that this Settlement Agreement is approved by the Commission, and does not include any additional time that may be required to address any applications for rehearing or appeals.

AGREEMENT

In order to avoid the risks and costs of further litigation, PG&E, CPSD, and CCSF (the Settling Parties) have agreed to the following terms and conditions as a complete and final resolution of all disputed issues in this proceeding.

1. The Mission Substation and the December 2003 Outage. The parties agree that PG&E's operations of Mission Substation, and its response to the December 20, 2003 fire, did not violate any Commission General Orders pertaining to electrical systems. However, PG&E's ability to detect and respond to the fire was constrained due to a combination of PG&E's operational response procedures, the lack of smoke detection equipment and fire barrier penetration sealing, and the state of the SCADA system at an unstaffed substation at the time of the December 2003 incident. In combination, these factors increased the level of risk of an undetected, progressing fire. PG&E's 1996 event report identified the need to expeditiously detect and respond to a progressing fire at the

Mission substation and to install fire barrier penetration sealing. PG&E did not implement the identified recommendations prior to the December 2003 incident. It is reasonable to conclude that, had PG&E implemented those recommendations in response to the 1996 fire, the duration of the 2003 fire at Mission Substation and the associated outage, as well as the number of customers affected by the outage, would have been significantly reduced.

2. **Reliability Improvements.** PG&E states that it has undertaken significant steps to improve reliability in San Francisco, including the construction of capital projects that are not covered by revenues from the settlement in PG&E's 2003 General Rate Case. PG&E states that it has embarked on a number of reliability projects to be constructed in 2005 and 2006 at a cost in excess of \$100 million, including:

- Replacement of 98 miles of paper insulated lead cable (PILC) cable, approximately 75 percent of which is within San Francisco;
- Replacement of switchgear, transformers, and other equipment at substations in San Francisco;
- Installation of SCADA in vaults containing network transformers and protectors, about 80 percent of which is in San Francisco;
- Installation and/or upgrades of fire detection and suppression systems at 22 indoor substations, 9 of which are in San Francisco.

CPSD and CCSF support PG&E's efforts to improve reliability within San Francisco. However, CPSD and CCSF have not undertaken any independent analysis as to the sufficiency or reasonableness of the projects identified above, nor are they taking any

position as to whether PG&E is entitled to rate recovery for these capital expenditures in its next General Rate Case (GRC). Nothing in this Settlement Agreement prevents PG&E from seeking rate recovery for these projects, and nothing prevents CPSD or CCSF from opposing such requests.

3. **Payments.** To resolve this OII and in light of PG&E's failure to timely and fully implement the recommendations in its 1996 event report, PG&E agrees to pay a total of \$6.5 million from shareholder funds as set forth below. PG&E will establish accounting procedures to track these expenditures and to ensure that these expenditures, and any related assets purchased, are excluded, in perpetuity, from rate recovery or any ratemaking proceeding. Upon the request of either CPSD or CCSF, PG&E shall produce such accounting documents or other records to demonstrate to the satisfaction of CPSD or CCSF that the entirety of the \$6.5 million has been spent in accordance with the terms of this agreement and that PG&E has established the required accounting procedures.

- a. \$3.0 million to hire an independent consultant and to implement reliability improvements in San Francisco, as further described in paragraph 4 below;
- b. \$1.0 million in capital expenditures as further described in paragraph 5 below to make improvements at the Hunters Point substation, which will remain in operation following the demolition of the Hunters Point Power Plant and will serve as an important part of PG&E's electric system in San Francisco;

- c. \$750,000 for a fire safety program for the San Francisco Fire Department (SFFD) and specialized fire equipment for SFFD, the purpose of which is to enhance the ability of SFFD to respond effectively to PG&E-related emergencies, as further described in paragraph 6 below;
- d. \$750,000 payment to CCSF to spend on infrastructure to improve public safety in the event of electric outages, as further described in paragraph 7 below;
- e. \$500,000 to support development of a Commission substation inspection program, as further described in paragraph 8 below;
- f. \$500,000 to be paid into the State of California's General Fund, as further described in paragraph 9 below.

4. **San Francisco Reliability Improvements.** An independent consultant will be selected by PG&E, subject to the consent of CPSD and CCSF, to perform a study of PG&E's electric system in San Francisco and to identify potential projects or other measures to improve reliability. PG&E shall design the scope and specifications for the study, subject to the consent of CPSD and CCSF. The cost of the study shall not exceed \$500,000 and will be paid out of the \$3.0 million identified in paragraph 3(a). Upon completion of the study, the parties will meet to come to unanimous agreement on which of the consultant's recommendations should be implemented utilizing the remainder of the funds identified in paragraph 3(a), as well as the time frame for implementation. Thereafter, the parties will meet as necessary to review progress on all of PG&E's plans

and projects to improve the reliability of its electric system in San Francisco. PG&E will pay the invoices for the independent consultant, as well as any costs of projects or other measures to improve reliability up a total combined amount of \$3.0 million, as identified in paragraph 3(a). Nothing in this agreement is meant to indicate that the parties agree that \$3.0 million is necessary or sufficient for improvements to PG&E's electric system in San Francisco. The parties' intent is for this agreement to provide PG&E shareholder funding to make further agreed upon improvements.

The consultant study shall be completed within six months of the date of the Final Approval of this agreement by the Commission. An extension of this six-month period may be granted only by agreement of the Settling Parties. Thereafter, the parties will agree on a schedule for implementation of the agreed upon projects or measures using the remainder of the \$3.0 million identified in paragraph 3(a).

5. **Hunters Point Substation.** PG&E will pay up to \$1.0 million out of the shareholder funds described in paragraph 3(b) above for capital expenditures to make improvements at the Hunters Point Substation. That substation will remain operational following the demolition of the Hunters Point Power Plant (hereinafter the "Hunters Point Substation Improvement Project" or "HPSIP"). PG&E and CCSF will agree on a plan for design and implementation of the HPSIP, which will include agreement on a timeline for completion of the project and a detailed itemization of planned expenditures for the HPSIP. PG&E and CCSF will work out a process for key stakeholders to be involved in the development of the plan for the HPSIP, including CPSD if it wishes to be involved. Within six months of Final Approval of the Settlement Agreement, a proposed plan for

the HPSIP will be presented to the Land Use Committee (or other appropriate committee) of CCSF's Board of Supervisors for review, including a public hearing, and approval. PG&E will be responsible for securing any additional required permits or approvals for the HPSIP, which permits will not be unreasonably withheld or conditioned by CCSF. PG&E will pay the invoices for the cost of consultants, outside vendors, and permitting costs involved in development or implementation of the HPSIP, up to the \$1.0 million identified in paragraph 3(b) above. PG&E will not charge the costs of its own employee time for development or implementation of the Plan to the HPSIP, and such costs will be treated as ordinary employee-related expenses. CCSF shall bear its own labor costs associated with its employees' participation in the development and implementation of the HPSIP.

Any portion of the \$1.0 million which is unspent or uncommitted as of December 31, 2008, will revert to CCSF for additional public safety infrastructure pursuant to paragraph 7. PG&E and CCSF may extend the deadline for expenditures under this paragraph by mutual agreement if the Hunters Point Power Plant is not removed by December 31, 2007, or if there are other reasons that the HPSIP cannot reasonably be implemented by December 31, 2008. Any money that reverts to CCSF as described above shall be paid to CCSF within 30 days of the date that the reversion is triggered. PG&E will provide CCSF (with a copy to CPSD) a written report of expenditures, itemized in detail, within 30 days following the end of each quarter in which expenditures were incurred. PG&E's obligation to provide this quarterly report will cease after the latter of: (1) completed implementation of the HPSIP or (2) full expenditure of the \$1

million. PG&E is responsible for administering the contracts with external consultants or vendors within budget and can stop work when the costs of the HPSIP have reached \$1.0 million; if PG&E does not take action to stop work when the costs of the HPSIP have reached \$1.0 million, PG&E shall be responsible for paying any additional costs for work performed prior to stopping work.

6. **Fire Safety Measures.** PG&E, CPSD, and CCSF will unanimously agree on expenditures of the \$750,000 identified in paragraph 3(c) above for a fire safety program for the SFFD and specialized fire equipment for SFFD, the purpose of which are to enhance the ability of SFFD to respond effectively to PG&E-related emergencies. Examples of elements of a fire safety program may include, but are not limited to, training by expert consultants in fighting fires in indoor substations and training exercises designed to simulate the conditions that might be encountered in fighting a fire in an indoor substation. Examples of specialized fire equipment include, but are not limited to, specialized cameras for smoke-filled indoor substations, and portable fans for clearing smoke from indoor substations. Costs of consultants or outside vendors will be covered by the \$750,000 identified in paragraph 3(c) above. PG&E will not include the costs of its own employee time for developing or participating in the program as part of the \$750,000 program, and such costs will be treated as ordinary employee-related expenses. The SFFD will bear its own labor costs associated with its employees' participation in the program. PG&E will pay the invoices for the cost of the fire safety program and specialized fire equipment up to the \$750,000 identified in paragraph 3(c). Any unspent funds as of one year after the Final Approval by the Commission of this agreement will

revert to CCSF for additional public safety infrastructure pursuant to paragraph 7. By unanimous agreement, the Settling Parties may extend this one-year period. Any money that reverts to CCSF as described above shall be paid to CCSF within 30 days of the date that the reversion is triggered.

PG&E and the SFFD will continue to work together to ensure effective fire safety training and preparedness for emergencies involving PG&E's electric distribution system. Nothing in this Settlement Agreement is intended to suggest that, upon exhaustion of the \$750,000 described above, PG&E will alter its current practice of paying for the out-of-pocket expenses of specialized training that PG&E and SFFD agree is necessary to ensure effective fire safety training and preparedness for emergencies involving PG&E's electric system in San Francisco.

7. **CCSF Public Safety Infrastructure.** Within 60 days after Final Approval by the Commission of this settlement, PG&E will pay to CCSF the sum of \$750,000 identified in paragraph 3(d) above, which will be used by CCSF to ensure the operation of facilities critical to public safety in the event of future outages. Upon request, CCSF will provide PG&E and CPSD with a list of the ultimate uses of the amounts spent in furtherance of this provision.

8. **Substation Inspection Program.** CPSD will determine how to spend the \$500,000 identified in paragraph 3(e) in support of a substation inspection program that will apply to all Commission-regulated electric utilities. Expenditures may include, but are not limited to, hiring one or more independent consultants to: (a) develop guidelines for a substation inspection program, (b) draft a general order to be considered by

stakeholders and the Commission in a rulemaking proceeding, and/or (c) perform inspections of utility-owned substations. PG&E will pay the invoices for the cost of the substation inspection program up to the \$500,000 identified in paragraph 3(e).

9. **Payment to State's General Fund.** Within 60 days after Final Approval by the Commission of this Settlement Agreement, PG&E will make a payment to the State of California's General Fund in the amount of \$500,000 identified in paragraph 3(f) above.

10. **SFFD Concerns Regarding PG&E's March 26, 2005, Event Report.** PG&E will revise and reissue its report regarding the March 26, 2005, Mission Substation outage as shown in Appendix A to this Settlement Agreement. Within 30 days of the signing of this agreement by the Settling Parties, PG&E will provide a copy of this revised report to all persons and entities to whom PG&E provided a copy of the original report. For each of those persons and entities, service of the revised report shall be accomplished in the same manner as the original report was served. The revisions in the report only address the concerns raised by the SFFD in this case. Neither CCSF nor CPSD intend by this agreement to indicate a position as to the report's accuracy or comprehensiveness regarding PG&E's actions or responsibility in connection with the March 26, 2005 outage.

11. **Testimony.** The Settling Parties agree that the prepared testimony and other documents identified in Appendix B should be identified as exhibits in this proceeding and received in evidence. In the event that this Settlement Agreement is not approved by the Commission and the issues in this case proceed to evidentiary hearing,

the Settling Parties reserve the right to object to the admissibility of any party's testimony or portion thereof.

12. **CCSF Release.** CCSF releases PG&E from any and all loss, expense, injuries to persons, loss of services, damage to property, liability, claims, penalties, demands and causes of action, arising from the December 20, 2003, outage in San Francisco, whether known or unknown, including but not limited to any claims advanced on its own behalf or on behalf of others pursuant to Business and Professions Code section 17200. Notwithstanding the foregoing, nothing in this release shall be construed to preclude or limit in any way the right of CCSF to recover under Claim No. 2003202494, as previously submitted by CCSF.

13. **CCSF Approval Process.** CCSF's final approval of its participation in this Settlement Agreement is contingent upon final passage of the necessary ordinance approving CCSF's participation in this Settlement Agreement.

14. **Approvals.** After signing this Settlement Agreement, including prior to final approval from the Commission or the CCSF Board of Supervisors, the Settling Parties shall actively support prompt approval of the Settlement Agreement, including briefing, comments on the proposed decision, written and oral testimony if necessary, appearances, and other means as may be needed to obtain the necessary approvals. The Settling Parties agree that if the Commission does not approve the agreement unconditionally and without modification, any party may, in its sole discretion, elect to terminate the Settlement Agreement. If the Settlement Agreement is terminated, the

Settling Parties shall request that the issues in this proceeding be heard and briefed at the earliest convenient time.

15. **Compromise.** This Settling Parties agree that this Settlement Agreement represents a compromise, not agreement or endorsement of disputed facts and law, and the Settlement Agreement does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.

16. **Intent of Settlement Agreement.** This Settlement Agreement embodies the entire understanding of the Settling Parties with respect to the matters described herein and supersedes any and all prior oral or written agreements, principles, negotiations, statements, or understandings among the Settling Parties. The Settlement Agreement may be amended only by a written agreement signed by all the Settling Parties. The Settling Parties have bargained in good faith to achieve this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. Each of the Settling Parties has contributed to the preparation of this Settlement Agreement. Accordingly, the Settling Parties agree that no provision of the Settlement Agreement shall be construed against any party because that party or its counsel drafted the provision. The section headings contained in this Settlement Agreement are solely for the purpose of reference, are not part of the agreement of the Settling Parties, and shall not in any way affect the meaning or interpretation of this Settlement Agreement.

17. **Governing Law.** This Settlement Agreement shall be governed by the laws of the State of California.

18. Successors and Assigns. The rights conferred and obligations imposed on any party by this Settlement shall inure to the benefit of or be binding on that party's successors in interest or assignees as if such successor or assignee was itself a party hereto.

19. Counterparts. This Settlement Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this Settlement Agreement.

Dated: 10/18/05

PACIFIC GAS AND ELECTRIC COMPANY

By: Judi K. Mosley
Judi K. Mosley, Attorney at Law

Dated: 10/18/05

CONSUMER PROTECTION & SAFETY DIVISION

By: Richard W. Clark
Richard W. Clark, Director

By: Travis T. Foss
Travis T. Foss, Attorney at Law

Dated: 10/18/05

CITY AND COUNTY OF SAN FRANCISCO

By: Thomas J. Long
Thomas J. Long, Deputy City Attorney